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NEW DELHI, MONDAY, SEPTEMBER 26, 1955

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 17th September 1955

S.R.O. 2107.—Whereas the election of Shri Kirpal Singh and Shri Harchand Singh as members of the Legislative Assembly of the State of PEPSU, from the Banur constituency has been called in question by an election petition duly presented under Part VI of the Representation of People Act, 1951 (XLIII of 1951), by Sari Hardam Singh, Lehal Colony, Patiala and Shri Ajaib Singh, Gaushala Road, Patiala;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, PATIALA

Nawal Kishore—Chairman.

Dalip Singh—Member.

Krishna Sahai—Member.

ELECTION PETITION NO. 19 OF 1954

(1) S. Hardam Singh, Lehal Colony, Patiala.
(2) S. Ajaib Singh, Gaushala Road, Patiala—Petitioners.

Versus

(1) S. Kirpal Singh, Village and P.O. Nohsimbli Tahsil Rajpura.
(2) Harchand Singh, Ex-Deputy Minister, Patiala.
(3) Arjan Singh, Mohalla Sukhdaspura, near 'B' Tank, Patiala.
(4) Babu Ram, General Secretary, Parja Socialist Party, Dera Bassi.
(5) Dasaundha Singh, Village Banur, Tahsil Rajpura.
(6) Hari Singh, Kacha Patiala.
(7) Joginder Singh, Mohalla Sukhdaspura, House No. 923, Patiala.
(8) Kharaiti Ram, House No. 1277, Mohalla Balmiki, Lahori Gate, Patiala.
(9) Piara Ram, Balmiki Mohalla, Lahori Gate, Patiala.
(10) S. Tarlok Singh, Mohalla Jarkhelan, Bassi Pathanan.—Respondents.

ORDER DELIVERED ON 12th September, 1955

During the elections held in February, 1954 in PEPSU Shri Kirpal Singh Respondent No. 1 for the General Seat and S. Harchand Singh Respondent No. 2

for the Reserved Seat for scheduled castes were set up as candidates by the congress from the Banur, double member, constituency. They filed their nomination papers on the 9th of January, 1954 and the scrutiny was held on the 13th of January, 1954. The polling took place on the 22nd of February, 1954 and both the Respondents No. 1 and 2 were declared elected. The result of the said election was published in the PEPSU Government Extraordinary Gazette, dated 27th February 1954. The notice under Rule 113 was published in the State Gazette, dated 12th May, 1954. The petitioners S. Hardam Singh and S. Ajaib Singh at first filed a petition on 22nd of May, 1954, but on 10th of June, 1954 they filed another amended petition challenging the election of the Respondents No. 1 and 2 on the following grounds:—

- (i) That the Respondents No. 1 and 2 and their agents with their connivance obtained assistance for the furtherance of the prospects of their election from the Government servants mentioned in Annexure 'A'.
- (ii) That His Highness the Rajpramukh of PEPSU interfered with the conduct of the election and exhorted the people to refrain from voting for the Akali candidates and to vote for the candidates put up by the congress. This had materially affected the result of the election in the Banur Constituency which was not a free one. Particulars of this corrupt practice are given in the list marked as Annexure 'B'.
- (iii) That promises of grants of land were made by Respondent No. 1 and his agents with his connivance, to voters belonging to scheduled castes with the object of inducing them to vote for Respondents Nos. 1 and 2 and to refrain from voting for the petitioners. Particulars of this corrupt practice are given in the list marked as Annexure 'C'.
- (iv) That the result of the election was materially affected by the improper acceptance of nomination papers of Respondent No. 6 Hari Singh who was a contractor for the performance of service undertaken by the Forest Department of PEPSU Government.
- (v) That the result of the election was materially affected by the improper acceptance of the nomination papers of Respondent No. 9 Shri Piara Ram who, at the time of filing of the nomination papers and also at the time of the scrutiny was disqualified for being chosen as, and for being, a member of the PEPSU Legislative Assembly by virtue of his holding an office of profit under the PEPSU Government as he was and still is employed as a peon in the Government Girls High School, Patiala.
- (vi) That the result of the election was materially affected by the improper rejection of the nomination paper of S. Tarlok Singh Respondent No. 10 on a mere technical point against the purpose and spirit of Sub-section 4 of section 36 of the R.P. Act, 1951.
- (vii) That the election has not been a free election for the reason that the corrupt practice of bribery and undue influence has extensively prevailed at the election. Particulars of this corrupt practice are given in the list marked as Annexure 'D'.

The petitioners seek to have the election of Respondents No. 1 and 2 declared wholly void under Section 100(a) and (c) of the R.P. Act.

The particulars of the corrupt practice alleged by the petitioners were given in Annexures 'A', 'B', 'C' and 'D'. On the objection of the Respondents that the allegations were vague and indefinite, the petitioners were permitted to give further and better particulars of Annexures 'B' to 'D' which they finally put in on 23rd December, 1954. The particulars of Annexure 'A' were considered adequate at that time and no further and better particulars were called in respect of this Annexure.

Briefly the respondents are alleged to have obtained assistance from the following Government servants other than giving their own votes:—

- (1) Kirpal Singh resident of village Nararu and Lambardar in village Behru who is also serving under the PEPSU Government as a Niaye Panch; and he acted as a polling agent of Respondent No. 1, at village Nararu.
- (2) Jaswant Singh serving in the Ayurvedic Department of PEPSU Government who acted as a polling agent of Respondent No. 2 at Manakpur.
- (3) Tehal Singh and Sher Singh Niaye Panches who acted as polling agents of Respondent No. 1 at Shambhu Kalan Polling Station.

(4) Beni Parshad Niaye Panch who acted as a polling agent of Respondent No. 1 at Polling Station Tepla; and

(5) S. Pritam Singh resident of village Harpalpur who was serving under the Punjab Government as Extra Assistant Director of Agriculture and was in those days posted at Ambala.

The particulars of interference in the election caused by the speech of His Highness the Rajpramukh as alleged in the Annexure 'B' are that on 30th of January, 1954, His Highness the Rajpramukh of PEPSU addressed a huge public meeting at Bhatinda where he bitterly attacked the Akalis and the Communists, the two Political parties who were opposing the Congress at the election; that wide publicity was given to this speech of the Rajpramukh by the Congress Papers viz., the Tribune, Ambala Cantt, The Milap of Patiala, Jullundur and New Delhi, The Partap of Jullundur and New Delhi, The Tej of Delhi and by the Congress workers orally throughout the Constituency. It is alleged that the newspapers were distributed and read out on 2nd, 3rd and 4th of February, 1954, by 15 persons in 60 villages.

The petitioners have alleged that promises of grants of land were made (*vide* Annexure 'C') to 110 Harijan voters in case they voted for Respondents No. 1 and 2, on 30 different dates, by 10 persons namely Pritam Singh of village Rani Majra, Jamiat Singh of village Kami, Dalip Singh Zaildar of village Jand Mangauli, Isher Singh Zaildar of village Malakpur Jatan, Ganga Ram Lambardar of village Bangran, Gian Singh Lambardar of village Mehon, Sudha Singh of village Chamaru, S. Pritam Singh Extra Assistant Director of Agriculture, Punjab, Chhaju Singh, Patwari of village Charaman and Dalip Singh Sufaidposh of village Changera.

The corrupt practice of bribery and undue influence (*vide* Annexure 'D') is alleged to have prevailed so extensively in the election that no comprehensive and exhaustive list has been given. The petitioners, however, have given some specific instances alleging that 45 persons were influenced by Kirpal Singh of village Nararu and Tehal Singh and Sher Singh of village Shambhu Kalan and Jaswant Singh Vald.

The Respondents No. 1 and 2 filed a lengthy written statement covering 15 pages each giving some irrelevant details touching political affairs, policies and their background which according to the law of pleadings should not have been mentioned in the written statement. They have *inter alia* pleaded that the signatures of the petitioners on the petition, dated 10th June, 1954, the annexures and the power of attorney, dated 22nd May, 1954 were not in the same hand and were not genuine; that the petition was not properly presented by any of the two petitioners personally or any other person authorised in writing in this behalf by any of them; that the petition dated 10th June, 1954 was not maintainable as the petition dated 22nd May, 1954 had been withdrawn; and that the petition dated 10th June, 1954 was not within time.

The contesting Respondents No. 1 and 2 have denied the allegations of corrupt practices of bribery and undue influence made against them in para. 7 of the petition, annexures and further and better particulars. They have further denied to have taken any assistance from the Government servants named by the petitioners or to have made any promises of grants of land to Harijan voters. It was contended by the respondents that promises of grants of land as referred to by the petitioners amounted only to a declaration of public policy to offer land to the landless and poor and did not fall within the definition of bribery. As regards the allegation of interference with the conduct of election by the Rajpramukh's speech, they pleaded ignorance. The Respondent No. 1 has also stated that he has no connection with the Rajpramukh whatsoever. Both the respondents further pleaded that the improper acceptance of nomination papers of Respondents No. 6 and 9 and rejection of the nomination paper of Respondent No. 10 had not materially affected the result of the election. Lastly it was contended by them that as the allegation of corrupt practice as referred to in Annexure 'D' was attributed to Respondent No. 1 alone, it was not open to the petitioners to challenge the election as a whole in the case of a double member constituency.

On the pleadings of the parties the following issues were framed:—
Preliminary Issues

(1) Are the election petition dated 10th of June, 1954, the annexures, and the powers of attorney dated 22nd of May, 1954 not signed both by Hardam Singh and Ajaib Singh Petitioners? O.R.

(2) Was the election petition not properly presented according to Law? O.R.

(3) Is the election petition dated 10th of June, 1954 not maintainable because the petition dated 22nd of May, 1954, has been withdrawn? O.R.

(4) Is the Election Petition dated 10th of June, 1954, not within time? O.R.

Issues on Merits

(5) (a) Whether the Respondents No. 1 and 2 and their agents with their connivance obtained assistance for the furtherance of the prospects of their election from persons serving under the Government of the State other than giving vote by those Government Servants, as stated in paragraph 7(1) of the election petition and Annexure 'A'? O.P.

(b) Whether the appointment of Kirpal Singh as agent as referred to in Annexure 'A' was revoked by Respondent No. 1 as soon as he came to know that he was a Lambardar and actually no assistance was taken from him? O.R.

(c) Whether Jaswant Singh referred to in Annexure 'A' was appointed as polling agent by Respondent No. 2 for Manakpur Polling Station with the connivance of Respondent No. 1? O.P.

(d) Whether Tehal Singh, Sher Singh and Beni Parshad, Niaye Panches were appointed as polling agents by Respondent No. 1 only and without the connivance of Respondent No. 2? O.R.

(e) Whether Niaye Panches are officers serving under the State Government? O.P.

(6) Whether His Highness the Rajpramukh delivered a speech in Bhatinda and publicity was given to it by Congress papers and Congress workers throughout the constituency and thereby the election of Respondents No. 1 and 2 in Banur was materially affected, as alleged in paragraph 7(2) of the election petition, Annexure 'B' and further and better particulars? O.P.

(7) Whether Respondent No. 1 and his agents with his connivance made promises of grants of land to voters belonging to scheduled castes to restrain them from voting for the petitioners as alleged in paragraph 7(3), Annexure 'C' and further and better particulars and if so, was the result of the election materially affected thereby? O.P.

(8) Whether promises referred to in Issue No. 7 amounted only to a declaration of public policy to offer land to landless and poor and did not fall within the definition of bribery? O.R.

(9) Whether persons mentioned in Annexure 'C' were agents of Respondent No. 1? O.P.

(10) Whether the election was materially affected by the improper acceptance of nomination papers of Respondents No. 6 and 9? O.P.

(11) Whether the election was materially affected by the improper rejection of the nomination papers of Respondent No. 10 on the ground that the declaration was not attested by a Magistrate? O.P.

(12) Whether the election was not free by reason of the fact that (a) corrupt practice of bribery and (b) undue influence had extensively prevailed at the election as stated in paragraph 7(VII) of the election petition and had been committed by Respondent No. 1 and his agents with his connivance, as alleged in Annexure 'D' and further and better particulars? O.P.

(13) Whether in view of the fact that the allegation of corrupt practice as referred to in Annexure 'D' has been attributed to Respondent No. 1 alone, is it not open to the petitioners to question the election as a whole in the case of a double member constituency? O.R.

(14) To what relief are the petitioners entitled? O.P.

Issues No. 1 to 4

The preliminary objections raised in these issues have been given up by the learned counsel for the respondents and he did not press them at the time of arguments. These issues are accordingly decided against the respondents.

Issue No. 5(a)

According to the petitioners' allegation in the petition, Annexure 'A' and his statement as P.W. 1, the Respondent No. 1 with the connivance of Respondent No. 2 obtained assistance from the Government servants namely:

- (i) Kirpal Singh resident of village Nararu, Lambardar in village Behru and also serving the Government of PEPSU as a Niaya Panch.
- (ii) Jaswant Singh of Chalela serving in the Ayurvedic Department of the PEPSU Government.
- (iii) Tehal Singh and Sher Singh serving under the PEPSU Government as Niaya Panches.
- (iv) Beni Parshad of Tepla serving under the PEPSU Government as a Niaya Panch.
- (v) S. Pritam Singh of village Harpalpur serving under the Punjab Government as Extra Assistant Director of Agriculture posted at Ambala.

The Respondents No. 1 and 2 denied that these persons gave any assistance to them. It is significant to note that the nature of assistance alleged to have been given by these persons was not indicated in Annexure 'A' and only the words of the section 123(8) "assistance for the furtherance of the prospects of election" were reproduced. It is now urged on behalf of the respondents that the allegations in the petition and the Annexure 'A' are vague and indefinite and have been made recklessly against responsible Government servants and that Annexure 'A' should be read to mean that 5 persons namely Kirpal Singh, Jaswant Singh, Tehal Singh, Sher Singh and Beni Parshad acted as polling agents and that Shri Pritam Singh only gave other assistance. The counsel for the petitioners has urged that he was not called upon to give any further and better particulars of Annexure 'A' which was considered adequate and that it is mentioned in Annexure 'A' that these persons gave assistance other than casting their own votes, and that it is enough if the period i.e. 'from 10th January, 1954 to 24th February, 1954' and the place 'throughout the constituency' are mentioned and that the names of the voters need not be given where the allegation is that the corrupt practice of bribery extensively prevailed and that the allegation cannot be said to have been made recklessly. He has referred to Sen and Poddar pages 34 and 755 in support of his contention. On the objection of the respondents, the petitioners were directed to give further and better particulars of Annexures 'B' to 'D' only and they gave the names of the parties alleged to have committed such corrupt practice and dates and places of the commission of each such practice. The petitioners also mentioned the names of some of the voters who were contacted but it is not required by law to disclose the evidence and to give the names of the witnesses also.

The petitioners have produced a large number of witnesses to show that the respondents obtained assistance from these Government servants. In these circumstances we have to look into the evidence and see if the allegation has been proved or not.

During the course of evidence it was stated by the petitioners witnesses generally that these 5 persons canvassed for the respondents and asked some people in their respective villages to vote for the Respondents No. 1 and 2, they distributed newspapers containing the speech of the Rajpramukh and told the villagers that it was the order of the Rajpramukh that the people should vote for the Congress candidates and that they promised grants of land to Harijan voters and induced them to vote for Respondents No. 1 and 2.

Shri Baldev. Kishan Puri, Superintendent, PEPSU High Court, who had acted as Presiding Officer at Nararu Polling Station and was examined by the petitioners as P.W. 10, has stated that Kirpal Singh signed the form 6 Ex. P.W. 3/10 in his presence and presented it to him before sealing boxes on 22nd February, 1954, but his appointment was revoked by an application in writing and he withdrew before the commencement of the polling and that he did not enter the polling booth again.

Gurcharan Singh, P.W. 20, Mansha Singh, P.W. 21, Gurdial Singh, P.W. 22, Sadhu Singh, P.W. 23 and Gurbachan Singh, P.W. 24 residents of village Nararu, Hazura Singh, P.W. 25, Teja Singh, P.W. 26 of Nathu Majra and Prithi Singh, P.W. 27 of village Gharaman, Mangal Singh, P.W. 58 of village Kohle Majra, Hazara Singh, P.W. 67 and Kehar Singh, P.W. 68 residents of Khanpur have all deposed that Kirpal Singh resident of village Nararu and Lambardar in village Behru used to hold meetings, distribute and read out newspapers and asked the people to vote for the Congress candidates and he also approached the witnesses referred to above. Out of these P.W. 21, Mansha Singh is the polling

agent of Ajalb Singh Petitioner No. 2; while P.W. 24, Gurbachan Singh is the polling agent of S. Hardam Singh Petitioner No. 1 and they are interested witnesses. P.W. 25 Hazura Singh of village Nathu Majra states that no meeting was held and Kirpal Singh told him alone that he should vote for the Congress; while P.W. 26, Teja Singh of the same village contradicts him by saying that a meeting was held in his village and it was in that meeting that Kirpal Singh asked the people to vote for the Congress candidates. P.W. 22 Gurdial Singh states that Kirpal Singh verbally said that it was Rajpramukh's order; while P.W. 20, Gurcharan Singh states that he read out Ishtahars (Posters). P.W. 21, Mansha Singh has said that no other thing was done except an appeal on behalf of the Congress candidates was made. Kirpal Singh was also examined by the petitioners as P.W. 43 and he denied having signed form 6 before the Presiding Officer and to have presented it and on this point he is belied by the Presiding Officer, P.W. 19 who says that Kirpal Singh signed Form 6 in his presence and presented it to him. The witness (Kirpal Singh) has denied this fact which obviously seems to be correct. He has, however, denied that he acted as polling agent or asked people to vote for the Congress or distributed any newspapers. He explains that he was appointed as a polling agent by Respondent No. 1 and he signed for 6 Ex. P.W. 3/10 but he never acted as such, as his appointment was revoked by the respondent. He is a Lambardar of village Behru which is situate in Semana Constituency and his brother acts as a Sarbrah and carries on the duties of a Lambardar. He would not have much influence outside his own village. It is not believable that the respondent would have got his assistance for canvassing support in other villages.

Khakhi Singh, R.W. 3, Gainda Singh, R.W. 4 and Jata Singh, R.W. 5 residents of village Nararu, Baru Singh, R.W. 40 of village Ghamana, Mansha Singh, R.W. 41 of village Khanpur and Charhat Singh, R.W. 2 and Arjan Singh, R.W. 44 of village Kohle Majra have denied that Kirpal Singh rendered any assistance to the Respondents No. 1 and 2. Jaswant Singh Vaid of Chalela. P.W. 44 was also examined by the petitioners and he denied to have signed Form 6 Ex. P.W. 3/11 and to have acted as a polling agent of Respondent No. 2, or to have helped him. The respondents produced another Jaswant Singh of Manakpur, R.W. 33 to show that he was the polling agent appointed by Respondent No. 2. It is thus clear that Jaswant Singh Vaid did not give any help to the respondents. It was also not pressed at the time of arguments by the petitioners' learned counsel that he had rendered any assistance.

As regards Tehal Singh, only one witness Sant Singh, P.W. 55 of Bapraur was produced and he stated that Tehal Singh met him in village Shambhu Kalan and asked him to vote for the respondents. Tehal Singh as R.W. 10 has denied that he ever met Sant Singh and asked him to cast his vote for Respondents No. 1 and 2. It is admitted in the written statement that he was the polling agent of Respondent No. 1 and Niya Panch. Except the solitary statement of Sant Singh, P.W. 55, no witness of Shambhu Kalan was produced.

The allegation about Sher Singh having given any assistance was not pressed at the time of arguments and there is no evidence of the petitioners also. Sher Singh as R.W. 11 has denied the allegation.

The evidence of P.Ws. 30 and 31 Jawala Singh and Ranjit Singh of village Jharmari, Sant Singh, P.W. 55, Chanan Singh, P.W. 58 and Gurbakhsh Singh, P.W. 57 of Bapraur is that Beni Parshad of Tepia distributed and read out newspapers and asked the villagers to vote for the Congress. Beni Parshad as R.W. 9 has denied that he ever visited these villages and carried on propaganda for the Respondents No. 1 and 2 by distributing newspapers.

The statements of Ran Singh, P.W. 36 of village Rurka, Mehar Singh, P.W. 51, Ganda Singh, P.W. 52, Gurbakhsh Singh, P.W. 53 and Sampuran Singh P.W. 54 of village Harpalpur, Mehar Singh, P.W. 65 and Sant Singh, P.W. 66 of village Lohchman and P.W. 69, Fateh Singh of village Khutha Kheri is that S. Pritam Singh, an officer of the Punjab Government visited their village, read out from the newspapers and asked them to vote for the Respondents No. 1 and 2. S. Pritam Singh, Extra Assistant Director of Agriculture, Punjab as R.W. 25 has sworn that he was never posted in Ambala nor he visited Ambala except for 4 or 5 days to meet his daughter and son-in-law during the election days. He denied that he ever visited any village or asked any person to vote for the Respondents No. 1 and 2. He admits that he belongs to village Harpalpur and that he is related to S. Kirpal Singh Respondent No. 1 on his mother's side, though remotely and has got land allotted to him in village Mahmudpur which is situate in Banur Constituency and is at a distance of two miles from Ambala.

Inder Singh, R.W. 34 and Pirthi Singh, R.W. 35 of village Harpalpur and Gainda Singh, R.W. 59 of village Lohchman have also stated that S. Pritam Singh never came to their villages, nor did he ask them to vote for the Congress.

If we strictly confine to Annexure 'A' in which it is mentioned that on 22nd of February, 1954 these four persons namely Kirpal Singh, Tehal Singh, Sher Singh and Beni Parshad acted as polling agents we find that no further assistance of any other nature is specifically alleged to have been given to the respondents on any other date in Annexure 'A' and in the light of this observation the type of evidence which has been adduced by the petitioners is to be considered. We have not been impressed by the petitioners' evidence and find that it is not sufficient and worthy of credit to prove this allegation of the petitioners. This issue is accordingly decided against the petitioners.

Issue No. 5(b)

It is clear from the evidence of Shri Baldev Kishan Puri, Presiding Officer of the Nararu Polling Station and P.W. 43, Kirpal Singh that the appointment of Kirpal Singh was revoked by Respondent No. 1 when he came to know that the former was a Lambardar and except for a few minutes, when he was present at the time of sealing of boxes, he never acted as a polling agent at Nararu. It has not been proved that he gave any other assistance to Respondents No. 1 and 2. This issue is decided in favour of the respondents.

Issue No. 5(c)

This issue has not been pressed by the learned counsel for the petitioners and is decided against them.

Issue No. 5(d)

It is admitted in the written statement that Tehal Singh, Sher Singh and Beni Parshad were Niaya Panches and were appointed by Respondent No. 1 as polling agents without the connivance of Respondent No. 2. As Respondents No. 1 and 2 were jointly fighting the election, it is immaterial that these persons were appointed by Respondent No. 1 to act as polling agents without the connivance of Respondent No. 2. If it is proved that they worked for both the respondents they would become the agents of both the respondents and it would be immaterial if one or the other respondent appointed them as Polling agents. This issue is accordingly decided against the respondents.

Issue No. 5(e)

The respondents' learned counsel has conceded that the Niaya Panches, the Lambardars, Sufaidposhes and other persons mentioned in Annexure 'A' are Government servants under proviso to Section 123(8) sub-clause (b) of R.P. Act. These persons are held to be Government servants and the issue is found in favour of the petitioners.

Issue No. 6

The petitioners have examined Iqbal Singh, P.W. 4, Clerk Publicity Department, who has produced the Daily Milap, Jullundur Edition, dated 4th February, 1954, Ex. P.W. 4/2, P.W. 5, Parmeshwari Dass, Representative of the Daily Partap who has produced the Delhi Edition of Partap, dated 3rd February, 1954, Ex. P.W. 5/1 and Jullundur Edition of Partap Ex. P.W. 5/2. They have also examined Shri Om Parkash, P.W. 11, Manager, Daily Milap, who has produced the Patiala Edition of Milap, dated 2nd February, 1954, Ex. P.W. 11/1, and Delhi Edition of the said paper Ex. P.W. 11/2. The Manager, Daily Partap has also stated that the news item published in his paper was collected from the Press Trust of India. The evidence of Shri Gursarni Suri, Information Officer, Office of the Director of Informations, PEPSU, P.W. 12 is that all the papers containing Ex. P3 (Tribune), Exs. P.W. 4/2, P.W. 5/2, P.W. 11/1 and P.W. 11/2 were received in his office and generally a batch of cuttings from all the papers received in the office was sent by his office to the Rajpramukh, but since a record is not maintained in his office, he could only say that cuttings of these papers must have been sent to His Highness. He has further stated that no contradiction of the speech delivered by the Rajpramukh was issued by the office.

Another important witness on this point is P.W. 15, S. Surjit Singh Sodhi, Deputy Commissioner, Patiala, who was posted during the months of January and February, 1954, at Bhatinda. He has deposed that His Highness the Rajpramukh had come to Bhatinda on an annual tour and he attended a public meeting in which an address of welcome was presented to him by the Municipal Committee and he replied to it. The witness does not remember the contents of the reply

given by the Rajpramukh, but says that there was no reference to the elections pending at that time.

The allegation of the petitioners as given in the petition and Annexure 'B' and amplified in further and better particulars is that His Highness the Rajpramukh of PEPSU on 30th January, 1954 delivered a speech in a huge public meeting at Bhatinda where he attacked the Akalis and Communists, the two political parties opposing Congress in the election, and wide publicity was given to this speech of the Rajpramukh by the Congress papers, namely Tribune, Partap, Milap and Tej and the Congress workers orally and that the newspapers were distributed and read out to the voters on 2nd February, 1954, 3rd February, 1954 and 4th February, 1954 by several Congress workers. The relevant portion of the speech as published in the Tribune, an English Daily Newspaper (an extract of which Ex. P3 is on the record), for the purpose of this petition is:

"The Rajpramukh of PEPSU, appealed to the people to elect, as their representatives, men of integrity and sacrifice. He asked the audience to beware of the Communists and the "atheists" who, he said, should not be tolerated. The Rajpramukh was addressing a big public meeting at Bhatinda.

The Rajpramukh gave a lie to the bogey of "Panthal in danger, and stated that no religion could ever be in danger. All religions stood for amity and harmony." The relevant portion of the Urdu Daily Milap, Jullundur, dated 4th February, 1954 Ex. P.W. 4/2 is reproduced as below:—

"Ek Bhari Public Jalsa me taqrir karte hue Rajpramukh ne Awam se ye bhi appeal kee keh vo firqa paraston aur Nastikon se bhi khabardar rahan—Rajpramukh ne Panth Khatra me ke nahra ko buniad qarar dete hue kaha keh kooe mazhab kabhi bhi khatra me nahin hosakta."

"Rajpramukh ne Bhatinda me bhi ek Social taqrir me taqrir karte hue awam se Panth khatra me hai ka nahra lagane walon se bachne kee appeal kee hai."

In the Daily Partap, Julludur Edition, dated 4th February, 1954, Ex. P.W. 5/2 it was reported:—

"Rajpramukh PEPSU Maharaja Patiala ne yahan ek jalsa me faqrir karte hue PEPSU ke awam se kaha keh vo firqa paraston aur khidmat ka jazba rakhne wale Umidwaron ko vote den, aur Firqa paraston ke gurmukh-kun aur alehdgi pasand nahron se bachen—jo log Panth khatra me ka nahra laga rahe hain, voh awam ko dhoka dene wale hain—kooe dharam khatra me nahin ho saktा."

In the same strain and to the same effect and more or less in the same words the speech was reported in Daily Milap, Patiala, Ex. P.W. 11/1 and Milap, New Delhi, Ex. P.W. 11/2.

The petitioners have put in a large number of witnesses of different villages to depose that the following workers and agent of the Respondents No. 1 and 2 read out and distributed newspapers in their villages and asked the people to vote for the Congress candidates saying that the Rajpramukh has passed an order and issued a proclamation to this effect:—

To avoid repetition of the evidence of each witness it may be briefly summarized that Kirpal Singh in villages Nararu (vide statements of Gurcharan Singh, P.W. 20, Mansha Singh, P.W. 21, Gurdial Singh, P.W. 22, Sadhu Singh, P.W. 23, Gurbachan Singh, P.W. 24); Ghamana (vide Pirthi Singh, P.W. 27); Nathu Majra (vide statements of Hazura Singh, P.W. 25 and Teja Singh, P.W. 28); Kohle Majra (vide statement of Mangal Singh, P.W. 58); Khanpur (vide statements of Hazura Singh, P.W. 67 and Kehar Singh, P.W. 68); Beni Parshad of Tepia in villages Jharmari (vide statements of Jawala Singh, P.W. 30 and Ranjit Singh, P.W. 31), Bapraur (vide statements of Sant Singh, P.W. 55, Chanan Singh, P.W. 58 and Gurbakhash Singh, P.W. 57), S. Pritam Singh of Harpalpur, in villages Harpalpur (vide statements of Mehar Singh, P.W. 51, Ganda Singh, P.W. 52, Gurbakhash Singh, P.W. 53 and Sampuran Singh, P.W. 54); Ghanaur (vide Ran Singh, P.W. 36 of Rurka, but deposes about Ghanaur; Lohchman (vide Mehar Singh, P.W. 65 and Sant Singh, P.W. 66); Khutha Khari (vide Fateh Singh, P.W. 69); and Sudha Singh of Chamaru in village Ghanaur (vide Daulat Singh, P.W. 32, Kapur Singh, P.W. 33 of Ghanaur and Piara Singh, P.W. 36 and Ram Singh, P.W. 36 of Rurka but deposes about Ghanaur); Surajgarh (vide Kundan Singh, P.W. 38 and Nikka Singh, P.W. 63), Jalalpur (vide Harbans Singh, P.W. 40, of Jangpura, but talks about Jalalpur); Mohi (vide statement of Sampuran Singh, P.W. 64) are said to have distributed and read out the newspapers.

The other persons who are stated to have carried on this sort of propaganda are Pritam Singh of Rani Majra in villages Rani Majra (vide statement of Arjan Singh, P.W. 29); Barana (vide Sarup Singh, P.W. 28); Baltana (Ram Sarup, P.W. 60 and Dalip Singh, P.W. 61 of Jaula Kalan but talk about Baltana); Dalip Singh, of Jandmangauli and Jamiat Singh of Kami in village Sandharsi or Dhandharsi (vide Rur Singh, P.W. 16, Hari Singh, P.W. 17 and Gurbakhash Singh, P.W. 18); Isher Singh, Zalidhar of Malakpur Jatan in village Haripur Jhungian (vide statement of Malla Singh, P.W. 34); Gian Singh, Lambardar of Mohan and Ganga Ram Lambardar of Bangran in villages, Sanaur (vide Puran Singh, P.W. 48, Sampuran Singh, P.W. 49 and Gurdial Singh, P.W. 50); Bahal (vide Mangal Singh, P.W. 45, Sampuran Singh, P.W. 46 and Dalip Singh, P.W. 47); Chhaju Singh, Patwari of Gharaman and Dalip Singh, Sufaidposh of Cangera in villages Gharaman (vide Muni Singh, P.W. 37 and Fauja Singh, P.W. 62); Thuha (vide Sunder Singh, P.W. 7, Mehar Singh, P.W. 8, Tara Singh, P.W. 9, Basant Singh, P.W. 10 and Mansha Singh, P.W. 13) and Mohi (vide statement of Sampuran Singh, P.W. 64).

The petitioners have led no evidence to show that Jaswant Singh Vaid, Tehal Singh and Sher Singh, Lambardars also took part in the distribution and reading out of newspapers. The allegation about these persons was also not pressed by the petitioners' counsel at the time of arguments.

An analysis of the petitioners' evidence shows that he examined 5 persons of Thuha, 5 persons of Nararu, 4 persons of Harpalpur, 3 persons each of Bahal, Sanaur and Bapraur, two persons each of Nathu Majra, Jharmari, Ghanaur, Gharaman, Surajgarh, Jalalpur, Baltana, Lohchman, Khanpur and one resident each of Gharamana, Rani Majra, Barana, Haripur, Jhungian, Kohlemajra, Mohi and Khutha Kheri.

It was alleged that 15 agents in 60 villages distributed and read out newspapers on 3 different dates, but out of these, the names of 3 agents Tehal Singh, Sher Singh and Jaswant Singh. Vaid were not pressed and 3 Lambardars, Gian Singh, Ganga Ram and Isher Singh are not residents of the Banur Constituency. The evidence produced relates to 23 villages and with regard to remaining 37 villages there is no evidence.

It is not necessary to comment upon the testimony of each witness and a few general observations would show the type of evidence produced by the petitioners:

- (a) The 3 dates of distribution of newspapers i.e. 2nd, 3rd and 4th of February, 1954, are different from the 30 dates on which promises of grants of land were alleged to have been made but the witnesses more or less talk of the same time i.e. on the same date the newspapers were distributed and promises of grants of land were made by the respondents' workers and agents, when they visited their villages. It may be said that some witnesses talk of other visits of the workers and agents on different occasions also and depose about series of instances, but they do not give specific dates of each visit and have made general statements.
- (b) Some witnesses state that newspapers which were distributed had the photo of two bulls and a yoke but no such photo appears on the newspapers produced in court. It appears that posters having the symbol of two bulls and a yoke were also distributed by the respondents and some illiterate witnesses might have confused these with the newspapers.
- (c) Some witnesses examined by the petitioners have said that the newspapers were in Gurumukhi and Hindi but the newspapers in which the speech was alleged to have been reported were either in English or in Urdu.
- (d) One witness has mentioned the name of Hindustan Times, but the speech was never published in this paper and this is obviously incorrect.
- (e) The trend of the statements of nearly all the witnesses is that they were told that it was the Rajpramukh's order that votes should be cast in favour of the Congress candidates and not for Akalis.
- (f) A few witnesses have also stated that the workers and agents of Respondents Nos. 1 and 2 had told them that Rajpramukh's order was that if they voted for the Congress land would be given to them. We do not find anything of this kind in the alleged speech of the Rajpramukh.
- (g) Some witnesses even do not know who is Rajpramukh and where he resides. The witnesses are mostly illiterate and some witnesses say

that papers were read out to them and some state that they were told orally about the Rajpramukh's order.

(h) There is no evidence that the 3 persons namely Jaswant Singh Vaid, Tehal Singh and Sher Singh also distributed any newspaper.

The respondents have also produced a large number of witnesses one or two from each village to deny that any papers were distributed or read out by the various persons named by the petitioners. The evidence of these witnesses is also open to great criticism. Most of them have even denied that respondents or any candidate or any congressmen or any supporter of the respondents ever came to their village which is on the face of it incorrect. It is a matter of common knowledge that during elections every village is visited by the candidates or their agents or supporters or sympathisers and most of the electors are approached either individually or collectively. Some of the witnesses though unsummoned came at their own expense with the men deputed by the respondents, but they denied that they were told anything about their statements. It appears to us that most of the witnesses were tutored to say so and have not spoken the entire truth. Whatever may be the weakness in the respondents' evidence, the petitioners have to succeed on the strength of their own evidence. The respondents' evidence is of negative character and much value cannot be attached to it.

The statements made by the witnesses of the petitioners as to what each worker or agent of the Respondents Nos. 1 and 2 said about the speech of the Rajpramukh are vague and indefinite. Most of them state that it was the Rajpramukh's order or proclamation that people should vote for the Congress candidates and some witnesses have said that land would be given to Harijans. There are a few witnesses who state that the speech of the Rajpramukh was not read out but the respondents' workers orally said so. The persons living in villages are mostly illiterate and do not know English or Urdu in which the speech of the Rajpramukh was published. The evidence of witnesses produced by the petitioners regarding distribution of newspapers is not convincing. Whatever the workers are alleged to have said is of no significance. It is well known that all sort of propaganda and counter propaganda is resorted to in the elections. It is no wonder that some of the workers might have carried on false propaganda on behalf of the respondents. The evidence of petitioners' witnesses is not impressive and it fails to carry conviction with us. It may be that a few papers were distributed and some workers misrepresented the speech but the petitioners have failed to substantiate their allegation that the speech as reported in the papers was made by the Rajpramukh or it was given wide publicity throughout the constituency.

It is clear from the above discussion of the petitioners' evidence that a news item about a speech said to have been made by His Highness the Rajpramukh was published in the papers namely Tribune, Milap and Partap, but the verbatim speech was never published. There is no evidence as to who reported the speech, nor the Deputy Commissioner, S. Surjit Singh, P.W. 15 in whose presence the speech was made remembers, after the lapse of one year, as to what was said by His Highness the Rajpramukh. There is no legal evidence to show that the speech as published in the papers was made by the Rajpramukh and the words attributed to him were actually used by him. The petitioners' learned counsel concedes that there is no proof that the Rajpramukh delivered the speech, as reported or that he directly interferred with the conduct of election and exercised any undue influence on the electorate by exhorting them to vote for the Congress and refrain from voting for the Akalis. However it is urged by him that according to the statement of P.W. 12 as cuttings of papers were sent to the Rajpramukh, this cutting must also have been sent to him and read by him and as no contradiction was ordered to be issued by him, he must have delivered the speech and that the speech of the Rajpramukh had indirectly influenced the electorate as he did not contradict the news of the speech attributed to him and allowed his name to be used with respect to the alleged speech widely by the workers of the Congress and the respondents.

It is further argued that the above fact amounts to the exercise of an undue influence even without the connivance of the respondents and their agents, under Section 123(1) read with Section 124 of the R.P. Act, 1951 and that as undue influence was exercised extensively the election was not a free one and the case would fall under Section 100(1), R.P. Act, 1951. Lastly it was said that reference to communalists in the speech is to the Akalis and atheists to the communists and by Panth it was meant Akalis and that the electors were induced not to vote for Akalis but to vote for Congress candidates.

The respondents' learned counsel has urged that there is no proof on the record that a speech was delivered by the Rajpramukh and the argument that the cuttings were sent to him and he must have seen them and he ought to have issued a

contradiction is far fetched and that the report of the speech as it is, is quite harmless and innocent. It is in the evidence of P.W. 15, S. Surjit Singh, Deputy Commissioner that His Highness the Rajpramukh was on his annual tour and in reply to the address presented to him by the Municipal Committee in a public meeting he made a speech.

As observed above, firstly, there is no legal proof that the speech as reported was delivered by the Rajpramukh. The fact that the cuttings of the papers are usually sent to His Highness the Rajpramukh raises a presumption that a cutting of this speech was also sent to him, but there is no further evidence that this speech was brought to his notice and he read it. It may be for this reason that the speech never came to the notice of the His Highness and no contradiction was, therefore, ordered to be issued by him. Secondly the verbatim speech is not before us and only a substance of the speech in indirect form was published in some of the papers. We are not in a position to say that the words attributed to His Highness in the papers were actually used by him or in what context those words were used. We are, therefore, unable to hold that the extracts or the substance of the speech as published in the papers is a correct reproduction from the original speech.

As regards the meaning and effect of the speech, we have carefully read it as reported in the papers placed on record and are of the view that the word "Communists" may also refer to the other bodies like Hindu Maha Sabha and Jan Sangh and it cannot be referred to Akalis alone. The words "atheists" no doubt refer to the communists as admitted by the Respondent No. 1 in his statement as R.W. 58. It appears to us that His Highness when referring to Panth meant the religion generally as is clear from the subsequent phrase that no religion could ever be in danger. If the entire speech is before us, we can say as to in what context the words attributed to His Highness were used by him and what is their exact meaning and effect.

As it stands the news of the speech in our view is not such as could have affected the mind of illiterate persons who formed the majority of the voters, nor had it indirectly induced them not to vote for Akalis or to vote for the Congress. If some of the workers of Respondents No. 1 and 2 carried on incorrect or false propaganda in the name of the Rajpramukh, it does not fall within the definition of any corrupt practice. It is not legally proved that the speech attributed to His Highness was made by him. It is also not established that wide publicity was given to the speech throughout the constituency. The speech if delivered has not materially affected the result of the election, nor His Highness directly or indirectly interfered with the conduct of the election. It cannot be, therefore, held that the election was not a free one and undue influence was exercised over the electorate by His Highness the Rajpramukh. We accordingly decide this issue against the petitioners.

Issue No. 7

The corrupt practice mentioned in para. 7(iii) relates to the promises of grants of land to Harijan voters named in the further and better particulars in order to induce them to vote for the Respondent No. 1 and refrain them from voting for the petitioners. The respondents' position is that even if this allegation is proved it does not amount to any corrupt practice and is in accordance with the accepted State Policy under the Constitution of India. The brief details given in the further and better particulars show that on 30 different dates, 10 workers and agents of the respondents approached 110 voters in 21 villages and offered land to Harijans but out of this list only two persons Rur Singh, P.W. 16 and Hari Singh, P.W. 17 of village Dhandarsi or Sandharsi were produced to whom promises of grants of land were made. No other elector out of the list of 110 persons and from 20 other villages has been examined. The petitioners' evidence about the offer of grants of land by various persons in different villages consists of nearly the same witnesses who have been referred to above; while dealing with issue No. 6 and their evidence on this point is open to the same criticism and the observations already made need not be repeated.

In addition to the criticism already made on the statements of these witnesses while dealing with issues No. 5 and 6, some of the witnesses belong to the petitioners brotherhood and are aligned with his party. Some of them have been acting as his polling agents and workers and their evidence has to be considered with caution. They cannot be said to be independent and disinterested witnesses.

It now remains to refer to the evidence on Annexure 'D'. Kirpal Singh, Lambardar of village Nararu in this annexure is alleged to have asked 7 voters, who have appeared as witnesses, in village Nararu (*vide* statements of Gurcharan Singh, P.W. 20, Mansha Singh, P.W. 21, Gurdial Singh, P.W. 22 and Gurbachan Singh, P.W. 24); Nathu Majra (Hazura Singh, P.W. 23 and Teja Singh, P.W. 26); Singh,

Ghamana (Pirthi Singh, P.W. 27) to follow him as a Lambardar and to vote for Respondents No. 1 and 2. Tehal Singh and Sher Singh are alleged to have used undue influence with 18 voters and threatened them with dire consequences if they did not vote for the Congress candidates, in village Shambhu Kalan. With regard to Tehal Singh, there is the solitary statement of one witness Sant Singh of Bapraur, P.W. 55 who merely states that he went to Shambhu Kalan and there met Tehal Singh who asked him to vote for the Respondents No. 1 and 2. With regard to Sher Singh and Jaswant Singh Vaid, there is no evidence. The other evidence on this annexure is the same as already dealt with under Issues No. 5 and 6. The additional evidence referred to above is vague and indefinite and insufficient to prove the allegations of threat and undue influence used by Kirpal Singh and Tehal Singh. The allegation of corrupt practice of bribery having extensively prevailed at the election throughout the constituency is also not established by any cogent and convincing evidence. In face of the denial of the respondents and their witnesses, no specific instance of bribery as alleged has been proved by positive and reliable evidence. It is no doubt very difficult to prove the allegations of bribery and other corrupt practices but the petitioner cannot be relieved of the duty of proving the charges beyond reasonable doubt before he can ask the Tribunal to unseat a successful candidate and to disqualify him and his agents for a period of 6 years. In order to establish the allegation of corrupt practice, a very high standard of proof is required by law as such allegations are in the nature of criminal charges and if proved entail a penalty on all the persons including the successful candidates and others associated with them. As regards the nature of evidence required to be produced to prove the allegations set out in the petition, it must, in our view, be such as would sustain a conviction in a criminal case. In other words the standards of proof required must be the same as in a criminal case and the evidence must be so satisfactory as to leave no room for reasonable doubt (*vide* Sarin and Pandit Indian Election Law pages 397-472). After a careful consideration of the evidence produced by the petitioners in the light of these observations, we find that it falls far short of the high standard of proof set out by several authorities, on the point. The petitioners have failed to establish the allegations made by him by unimpeachable, strong and reliable evidence. We, therefore, find this issue against them.

Issue No. 8

The position taken up by the respondents is that promises of grants of land even if made amount to a declaration of public policy to offer land to landless and poor and do not fall under the definition of bribery. The respondents' learned counsel has argued that it is the accepted policy of the Government and Congress to improve the lot of Harijans and to grant them land and that if such promises were made to them, it amounts to a declaration of a public policy and such offers do not fall within the meaning of bribery under Section 123(2) proviso. The petitioner's learned counsel contends that when the offer or promises of grants of land are proved to have been made to an elector whether Harijan or not, by a candidate or his agents or any other person with the connivance of a candidate or his agents, with the object of inducing him to vote or refrain from voting at an election, it would amount to bribery which is a major corrupt practice within the meaning of Section 123(1) of the R.P. Act, 1951. The declaration of a public policy is not deemed to be an interference within the meaning of Section 123(2) under undue influence, that is to say, any direct or indirect interference with the free exercise of an electoral right, but in the case of a bribery, there is no exception in respect of a declaration of a public policy and it is no defence to say that if any land was offered with the object of inducing a person to vote or refrain from voting, it was in pursuance of a public policy. In view of our finding on Issue No. 7, it is not necessary to go into this question in detail. In our opinion if allegation of bribery is established it will amount to a major corrupt practice and no question of public policy will arise. This issue is accordingly decided against the respondents.

Issue No. 9

If the persons mentioned in Annexure 'C' are proved to have made promises of grants of land with the knowledge and consent of Respondents No. 1 and 2, they would be deemed to be agents of Respondent No. 1 within the meaning of word 'Agent' as defined in Section 79(a) of the R.P. Act, 1951. This issue is decided in favour of the petitioners.

Issue No. 10

This issue is not pressed as regards Respondent No. 6, Hari Singh. But as regards Respondent No. 9 Piara Ram, it is proved from the statement of P.W. 6, Dewan Chand, a clerk of the Government Girls High School, Patiala that he was employed as a sweeper in the Government Girls High School, Patiala, and though he resigned on 7th January, 1954, he was not relieved till 13th January, 1954 on

which date he was paid his salary for 12 days. Piara Ram was a Government servant and holding an office of profit on 9th January, 1954 when he filed his nomination paper. He was not eligible to stand and his nomination paper was, therefore, improperly accepted. The Petitioner No. 1 secured 15612 votes and Petitioner No. 2, 15680 votes; while Respondent No. 1 had got 18126 votes and Respondent No. 2, 21644 votes. If the votes secured by Piara Ram-Respondent No. 9, i.e. 928 votes are taken away from the votes secured by successful candidates Respondents No. 1 and 2, they would have still won. The Respondent No. 1 won by a margin of 2514 votes and Respondent No. 2 by a margin of 5964 votes, and as the margin of votes was much more than 928 votes, the result of election was not materially affected by improper acceptance of the nomination paper of Respondent No. 9. The issue is decided against the petitioners.

Issue No. 11

This issue has not been pressed by the learned counsel for the petitioners and is decided against them.

Issue No. 12

As discussed above, it is not proved from the petitioners' evidence that corrupt practice of bribery and undue influence had extensively prevailed at the election, and this issue is also decided against the petitioners.

Issue No. 13

In view of our finding on Issues No. 5 and 6 that no corrupt practice as alleged has been established from the evidence on record, this issue does not arise. Both the respondents have admitted that they were running their electioneering campaign and had distributed villages for propaganda work, and they had issued posters bearing their names jointly and separately and that some of their workers were also common. It is clear that one respondent was also acting for another and in such a case it is open to the petitioners to challenge the election as a whole even if the allegation of corrupt practice is attributed to Respondent No. 1 only. This issue is accordingly decided against the respondents.

Issue No. 14

In view of our finding that no corrupt practice is proved, the election of Respondents No. 1 and 2 cannot be set aside. The petition accordingly fails and is hereby dismissed with costs which are assessed at Rs. 300.

(Sd.) NAWAL KISHORE,
Chairman.

(Sd.) DALIP SINGH,
Member.

(Sd.) KRISHNA SAMAI,
Member.

[No. 82/19/54/10996]

By Order,
P. S. SUBRAMANIAN, Secy.

